



Submission cover sheet

Inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025

Submission number: 002

Submitter: Victims of Crime Commissioner

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VICTIMS OF CRIME
COMMISSIONER
ACT Human Rights Commission

Standing Committee on Legal Affairs
Office of the Legislative Assembly
Via lacommitteelegal@act.gov.au

14 January 2026

Dear Standing Committee on Legal Affairs

Inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025

Thank you for the opportunity to make a submission in relation to the Standing Committee's Inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025 ('the Inquiry').

Please find **enclosed** my submission to the Inquiry.

I request that this submission be published in full.

Yours sincerely

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About Victim Support ACT

1. The Victims of Crime Commissioner ('VOCC') is an independent statutory advocate and the head of Victim Support ACT ('VSACT'). VSACT is situated within the ACT Human Rights Commission. The VOCC's functions are set out in the *Victims of Crime Act 1994*, the *Victims of Crime (Financial Assistance) Act 2016* and the *Victims of Crime Regulation 2000*.
2. The function of the VOCC is to advocate for the interests of victims of crime in the ACT. Particularly relevant to the subject of the Inquiry, the VOCC's responsibilities include:
 - a. advocating for the interests of victims;
 - b. monitoring and promoting compliance with victims' rights; and
 - c. consulting on and promoting reforms to meet the interests of victims.
3. The terms of reference of the Inquiry directly relate to the core functions of the VOCC in consulting and promoting reforms to meet the interests of victims.

Introduction

4. It is the VOCC's view that an Indicative Sentencing Scheme should not erode victims' rights by limiting their ability to participate in the sentencing process. Nor should the scheme limit information available to the Magistrates Court such that they are not in a position to properly consider the effect of the offence on the victims and anyone else who may make a victim impact statement ('VIS'). The VOCC therefore welcomes that the Explanatory Statement identifies that the 'Bill intends to uphold and protect victim's right'.
5. An Indicative Sentencing Scheme should also not expose victims to further cross-examination should plea(s) of guilty not be entered. To that end, the VOCC strongly supports the protection afforded to the victim impact statements in any criminal or civil proceeding including the primary proceeding.

Victim Impact Statement

6. The VOCC considers it critical that the relevant legislative guidance for the preparation, form and effect of a VIS under Part 4.3 of the *Crimes (Sentencing) Act 2005* (ACT) and relevant jurisprudence are applicable to the VIS tendered in a sentence indication hearing. This is particularly noting that if the defendant accepts the indicated sentence, the Magistrates Court must not impose a sentence more severe than the indicated sentence.



7. Therefore, the VOCC is supportive of the proposed amendment to the Dictionary providing that the victim impact statement for division 3.4.1A refers to s 47 of *Crimes (Sentencing) Act 2005*. However, the VOCC holds significant concerns that references to VIS in the proposed ss 59, 61E, 61F provide ‘victim impact statement prepared by or for the complainant’.
8. Section 59 of the Bill provides that a ‘victim impact statement prepared by or for the complainant’ is mandatory information required to be taken into account by the Magistrate. The VOCC holds concerns that the addition of ‘prepared by or for the complainant’ could limit the scope of who can provide a VIS.
9. Section 49 of the *Crimes (Sentencing) Act 2005* provides that a victim of the offence; a person who has parental responsibility for a victim of the offence; a close family member of a victim of the offence; a carer for a victim of the offence and a person with an intimate personal relationship with a victim of the offence may make a VIS for the offence. However, page 11 of the Explanatory Statement for the Bill provides ‘[i]n some cases, the court may consider the mandatory information required to be taken into account is not sufficient. Therefore, this section also provides that the court *may* consider any additional information the court considers relevant. For example, statements may be provided by a person who has parental responsibility for a complainant, a close family member or a carer for a complainant, or a person with an intimate personal relationship with a complainant.’ The Explanatory Statement therefore makes it clear that the addition of ‘prepared by or for the complainant’ is intended to limit the scope of who can prepare a VIS such that people who are explicitly outlined as people who *can* provide a victim impact statement can also be characterised as discretionary information providers.
10. The VOCC considers that there is no clear justification articulated for limiting who can provide a VIS... The VOCC strongly recommends that proposed s 59 be amended to require the court to consider any victim impact statement and that the clause ‘by or for the complainant’ be removed.
11. Further, the VOCC considers it critical that the Indicative Sentencing Scheme does not diminish the therapeutic function of the VIS, particularly noting that as the Court of Appeal observed at [69] in *Kader v Director of Public Prosecutions* [2024] ACTCA 31 ‘...victim impact statements “play an important role” in achieving “social and individual rehabilitation” and in facilitating “the task of judges in imposing just and appropriate sentences”.’
12. The VOCC therefore holds significant concerns that the consequential amendments to the *Crime (Sentencing) Act 2005* (ACT) provide that for the purposes of determining the indicated sentence, the VIS may be tendered to the court when the court considers appropriate and for the purpose of

sentencing the defendant, the statement may be tendered to the court, made orally or read out in court when the court considers appropriate. The Explanatory Statement provides that ‘new section 52(3A) makes it clear that a victim impact statement prepared for the purposes of determining the indicated sentence is not to be read out in court.’

13. The VOCC holds concerns that the proposed consequential amendments limit victims’ ability to participate in the proceedings and in the absence of any articulated and significant justification to do so, the VOCC strongly recommends that the proposed new ss 52(2A) and 52(3A) of the *Crimes (Sentencing) Act 2005* be amended to remove any limitation of the victims’ ability to read out their VIS in an indicated sentence hearing.

The use and definition of the term ‘victim’

14. The VOCC hold concerns about the Bill’s use of the term ‘complainant’ instead of ‘victim’. ‘Complainant’ is not defined in the Bill, the *Magistrates Court Act 1930* (ACT) or the *Legislation Act 2001* (ACT).
15. While not explicitly articulated, the Bill appears to require the Magistrates Court to engage in a task akin to sentencing under the *Crimes (Sentencing) Act 2005* (ACT). Presumably, any indication to be imposed must be guided by the purposes of sentencing set out in s 7 and the statutory considerations set out in s 33 of the *Crimes (Sentencing) Act 2005* (ACT) given that the Magistrates Court must not impose a sentence more severe than the indicated sentence.
16. While the VOCC acknowledges the defendant’s right to the presumption of innocence in a criminal proceeding, the VOCC holds concerns that in the context of a sentencing exercise, albeit indicative, the term ‘complainant’ is prone to be misleading.
17. The *Victims of Crime Act 1994* (ACT), *Crimes (Restorative Justice) Act 2004* and the *Bail Act 1992* (ACT) refer solely to ‘victim’ rather than ‘complainant’ in relation to proceedings prior to a finding of guilt or a conviction. Further, the Victorian Indicative Sentencing Scheme in the *Criminal Procedure Act 2009* (Vic) uses the term ‘victim’ alongside the term ‘accused’.
18. For the above reasons, the VOCC recommends that the term ‘complainant’ is replaced with ‘victim’, adopting the definition of ‘victim’ provided for in s 47 of the *Crimes (Sentencing) Act 2005* (ACT).

Notification

19. The VOCC welcomes the proposed new s 57(3) providing that the defendant's legal representative must give the court written notice of the defendant's intention to apply for a sentence indication at least 5 working days before the application is made. However, it is not clear to the VOCC whether there is any obligation for the victim to be notified of the sentence indication hearing such that they can prepare a VIS.
20. When introducing similar reforms in Victoria, the Attorney-General the Hon Jaclyn Symes MP said that expanding the scheme was designed to: 'support the continued effective and efficient functioning of the justice system and its recovery from COVID-19, including helping courts to manage and reduce a significant backlog of cases ... while also providing benefits to victims in providing an outcome and removing the trauma of giving evidence at trial.' In the 2023 Report '*Silenced and Sidelined: Systemic Inquiry into Victim Participation in the Justice System*' ('the Report'), the Victorian Victims of Crime Commissioner noted that '[d]espite these intentions, like many processes in the justice system, the sentence indication scheme is not centred on victims' needs or participatory entitlements.'
21. Victoria Police prosecutors have raised significant concerns about the increased use of sentence indications, and the adverse impact on victims' participation in the summary jurisdiction in the Report as follows:

A common option at the moment to resolve matters is a sentence indication. Sentence indications are often sprung on prosecutors, and when this happens, we've really lost our opportunity to get a Victim Impact Statement. Even if we did come back another day with a Victim Impact Statement, it's not going to be factored into sentence, because the indication has already been made. This is despite the recent amendments to the Charter that prioritises the prosecution's role in seeking victims' opinions.¹

22. The Victorian Victims of Crime Commissioner has therefore recommended that the Charter under the *Victims' Charter Act 2006* (Vic) be amended to require victims to be informed about sentence indication applications and give victims the opportunity to provide victim impact information to the prosecution so that it can be provided to the court at a sentence indication hearing.²

¹ Victims of Crime Commissioner (Vic), *Silenced and Sidelined: Systemic Inquiry into Victim Participation in the Justice System* (November 2023) 168.

² Ibid 427, 428.

23. These recommendations were adopted in the Victorian Victims of Crime Commissioner's September 2025 report, *Review of the operation of the Victims' Charter Act 2006 and its benefits for victims*.
24. The Victorian Victims of Crime Commissioner continues to raise concerns about the Sentence Indication Scheme in Victoria which is underscored by their policy position paper dated March 2024 which noted:

...[C]onsidering victim impact at the sentencing stage is challenging for the courts because Victim Impact Statements are generally not available, and sentence indications can occur quickly, without a victim even being aware of a hearing taking place.

Like many processes in the justice system, the sentence indication scheme is not centred on victims' participatory needs. The [Victorian] Victims of Crime Commissioner (VOCC) believes the sentence indication scheme does not have sufficient safeguards to uphold victims' participatory rights.

25. The VOCC considers that the reviews of the Victorian Indicative Sentencing Scheme underscore that there is a significant risk that an indicative sentencing scheme may result in unintended consequences for victims. Accordingly, the VOCC recommends the inclusion of notification provisions akin to the notice period required for counselled person in relation to applications for leave to disclose protected confidence under s 79E of the *Evidence Miscellaneous (Provisions) Act 1991* (ACT).

The scope of the Indicative Sentencing Scheme

26. It appears to the VOCC that the Bill is silent on the scope of sentencing outcomes the Magistrates Court can give an indication on. The VOCC considers that the scope of the Scheme's operation would be clearer with more express guidance on this point. The VOCC notes the scope of Victorian Magistrates Courts' sentence indications is set out in s 60 of *Criminal Procedure Act 2009* (Vic) that:

At any time during a proceeding for a summary offence or an indictable offence that may be heard and determined summarily, the Magistrates' Court may indicate that, if the accused pleads guilty to the charge for the offence at that time, the court would be likely to impose on the accused—

- (a) a sentence of imprisonment that commences immediately; or
- (b) a sentence of a specified type.

27. Similarly, s 60AT(2) of the *Local Court (Criminal Procedure) Act 1928* (NT) provides:

- (2) The Court may indicate that, if the defendant pleads guilty to a charge at the time of the application, the Court would be likely to impose on the defendant:
 - (a) if sections 78CA and 78CB of the *Sentencing Act 1995* do not apply – a sentence of actual imprisonment to commence at a specified time; or
 - (b) a sentence of another specified type; or
 - (c) if section 78CB of the *Sentencing Act 1995* applies to the offence – a sentence of actual imprisonment as required by that section; or
 - (d) if section 78CA of the *Sentencing Act 1995* applies to the offence:
 - (i) a sentence that is the minimum sentence of actual imprisonment that the Court is required to impose for the offence; or
 - (ii) a sentence that takes into account exceptional circumstances under section 78DB of the *Sentencing Act 1995*, if the Court is satisfied that, if the Court were imposing a sentence on the defendant, the circumstances of the case would be exceptional.

28. The Victorian Scheme provides different indicative sentencing powers to the higher courts and Magistrates court. The Magistrates' Court may indicate a sentence of imprisonment that commences immediately a sentence of a specified type.³ The higher courts (Victorian County Court and Supreme Court) may indicate a sentence of a specified type or a 'specified maximum total effective sentence'.⁴

Delay

29. The VOCC supports the review mechanism provided for in s 61G of the Bill. The VOCC suggests adapting additional express review terms that go to examining the impact of the indicative sentencing scheme on victims. The VOCC notes the terms of the pending statutory review of significant aspects of the Victorian Indicative Sentencing Scheme, include, "their effectiveness in reducing delay in the courts", "their impact on victims", and "the availability of information before the courts of the impact of an offence on any victim of the offence at the time that the court is considering an application for a sentence indication."⁵

³ *Criminal Procedure Act 2009* (Vic) Pt 3.3 div 3.

⁴ *Ibid* Pt 5.6.

⁵ *Ibid* s 209A.



30. It has been identified that an Indicative Sentence Scheme may enable defendants to deliberately prolong a matter, particularly given that, in certain circumstances, there may be forensic advantages for defendants to delay the timing of their sentencing hearing, for example, providing more time to demonstrate compliance with bail conditions or participation in rehabilitative programs. This concern is illustrated in Victoria insofar as the Victorian Office of Public Prosecutions' internal policy was amended in 2008 to specifically address the issue of defendants deliberately using the scheme to delay proceedings in the context of challenging indication applications.⁶ Relatedly, the Victorian Sentencing Advisory Council review of the pilot scheme found that in 22 of the 25 indication requests, some delay was created from requiring additional hearings be held, or adjournments given.⁷
31. Further, the NSW Bar Association, in a 2013 submission to NSW Law Reform Commission inquiry on models for encouraging early appropriate guilty pleas raised further concerns about the potential for an indicative sentencing scheme to distort the operation of the criminal justice system as follows:

If such a scheme were to be reintroduced, care should be taken to ensure that its operation is not distorted by the routine allocation of particularly 'lenient' judges to the scheme hearings. This occurred during the previous scheme and there is a great incentive for the courts to do precisely that - it assists with clearing cases, it benefits defendants and their representatives; but it increases Crown appeals and brings the system into disrepute in the community at large. If sentences indicated at that stage are less than sentences imposed upon defendants who plead guilty at an earlier stage, the scheme provides a disincentive to plead early.⁸

⁶ Asher Flynn, 'An indication of injustice: An analysis of the problems inherent to maintaining the sentence indication scheme in Victoria's higher courts' (2010) 12(2) *Flinders Law Journal* 41, 57.

⁷ Victorian Sentencing Advisory Council [VSAC], *Sentence Indications: A Report on the Pilot Scheme* (2010) 31.

⁸ NSW Bar Association, Submission No 4 to the New South Wales Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas: Model for Discussion* (16 December 2013).